

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JANE DOE, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 05-120-JJF
	:	
INDIAN RIVER SCHOOL DISTRICT,	:	
et al.,	:	
	:	
Defendants.	:	

**MEMORANDUM OPINION AND ORDER**

The Court has Plaintiffs' June 2, 2008 letter (D.I. 273) and Defendants' June 3, 2008 letter (D.I. 274) concerning the procedure for summary judgment briefing. Specifically, Plaintiffs believe that their briefing conforms to the Court's scheduling order entered on March 24, 2008, which provided for the filing of an Opening Brief, Answering Brief and Reply Brief on specific dates enumerated by the Court. Plaintiffs contend that Defendants' filing of a Counter-Statement Of Facts pursuant to the Court's Summary Judgment Procedure Order is inappropriate in light of the Court's March 24, 2008 Order and the Scheduling Orders in this case. Plaintiffs further contend that the Counter-Statement Of Facts contains points of advocacy which has resulted in Defendants' exceeding the page limits for briefing. Plaintiffs indicate that they will not file further briefing on this issue, if the Court does not intend to consider the Counter-

Statement as part of the record. However, if the Court intends to consider Defendants' Counter-Statement, Plaintiffs request leave of Court to file a Motion To Strike The Counter-Statement.

Defendants contend that they have complied with the Court's Scheduling Order which required briefing to be completed in accordance with the Local Rules which necessarily includes the Court's Summary Judgment Procedure Order. Defendants contend that the Court should not issue an advisory opinion on a Motion To Strike not currently pending, and should resolve the parties' dispute by allowing Plaintiffs an opportunity to file a reply to the Counter-Statement Of Facts.

Plaintiffs have filed a reply letter (D.I. 275) reiterating the parties' positions and further detailing the discussions between the parties that preceded the presentation of the issues to the Court. Plaintiffs have also concurrently filed a Motion To Strike (D.I. 277).

Based on the briefing and scheduling orders entered in this case, the Court did not intend that the parties would follow the Summary Judgment Procedure Order on the Court's website.<sup>1</sup> In this case, it is the Court's understanding that the parties are

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<sup>1</sup> The Court further notes that Plaintiffs filed a Statement Related To Plaintiffs' Motion For Summary Judgment (D.I. 253) according to the Court's Summary Judgment Procedure Order. Accordingly, it appears to the Court that the confusion over application of the Order applies equally to both parties.

in agreement that no genuine issues of material fact exist and that trial is unnecessary on the remaining School Board Prayer Issue. If the Court's understanding is correct, the Court prefers that summary judgment briefing be conducted in the following manner.<sup>2</sup> First, Defendants have filed a Motion For Leave To File Answering Brief (D.I. 267) attaching their Answering Brief. While the filing of such a Motion was unnecessary in light of the Court's March 24, 2008 Order, the Court will grant the Motion, and the Answer Brief will be deemed filed. The Court will strike the Counter-Statement Of Facts filed by Defendants, and deny as moot the currently pending Motion To Strike filed by Plaintiffs, which has not been fully briefed.

In light of the confusion that has arisen with respect to the form order on the website and to avoid prejudice to either party, the Court will allow Defendants to file a Revised Substitute Answering Brief to replace the current Answering Brief, should they deem such a filing necessary. In addition, the Court will allow Plaintiffs to file a Revised Substitute Reply Brief, if necessary to respond to any Revised Substitute Answering Brief that is filed by Defendants.

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<sup>2</sup> The Court notes that its Summary Judgment Procedure Order is typically entered only in patent cases. The Court will modify the website to make this clear.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Defendants' Counter-Statement Of Facts (D.I. 266) is **STRICKEN**.

2. Defendants' Motion For Leave To File Answering Brief (D.I. 267) is **GRANTED**, and the Answering Brief is deemed filed.

3. Plaintiffs' Motion To Strike (D.I. 277) is **DENIED** as moot.

2. Unless the parties otherwise agree to a stipulated schedule, Defendants shall file any Revised Substitute Answering Brief **within ten (10) days** of the date of this Order, and Plaintiffs shall file any Revised Substitute Reply Brief **within five (5) days** of receipt of Defendants' Revised Substitute Answering Brief.

3. If the parties determine that such revised substitute briefing is unnecessary, they shall advise the Court promptly in writing that no such briefing will be filed.

June 5, 2008

  
UNITED STATES DISTRICT JUDGE